

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-013

Extending Term of Current Lebanon Mayor and Aldermen

QUESTION

Under the current Lebanon City Charter, terms of the present Mayor and Aldermen expire in October 2005 and October 2007. The City Council wishes to have elections for these offices conducted in November of even years to coincide with gubernatorial and presidential elections. May the General Assembly, by private act, amend the Lebanon City Charter to extend the terms of the current members to November 2006 and November 2008, respectively, in order to effect this change in time for these elections?

OPINION

Yes. The same result could be accomplished if the charter is amended to provide that elections to replace aldermen whose terms expire in October 2005 will not be held until the first Tuesday in November 2006, and that elections to replace aldermen whose terms expire in October 2007 will not be held until the first Tuesday in November 2008. In that case, under Article VII, § 5, of the Tennessee Constitution, the current incumbents would hold over until new officers qualify under the November elections.

ANALYSIS

This opinion concerns the constitutionality of a private act requested by a resolution of the Lebanon City Council. Under the current Lebanon City Charter, terms of the present Mayor and Aldermen expire in October 2005 and October 2007. The City Council has passed a resolution stating that it wishes to have elections for these offices conducted in November of even years to coincide with gubernatorial and presidential elections. The resolution asks the General Assembly to extend the terms of the present Mayor and Aldermen to November 2006 and November 2008, respectively, to bring about this change. The request asks whether the General Assembly may constitutionally amend the city charter to extend the term of the present incumbents in this way.

The General Assembly has unlimited power of legislation, except so far as it is restrained, expressly or by necessary implication, by the Constitution of the United States and the Constitution of Tennessee. *Mayhew v. Wilder*, 46 S.W.3d 760, 770 (Tenn. Ct. App. 2001), *p.t.a. denied* (2001) (citing *Prescott v. Duncan*, 126 Tenn. 106, 148 S.W. 229 (Tenn. 1912)); *Motlow v. State*, 125 Tenn. 547, 145 S.W. 177 (Tenn. 1912). No state constitutional provision would prohibit this measure.

Article XI, § 9, of the Tennessee Constitution provides in relevant part that “[t]he General Assembly shall have no power to pass a special, local or private act having the effect of *removing* the incumbent from any municipal or county office or *abridging the term* or altering the salary prior to the end of the term for which such public officer was selected” (Emphasis added). The provision does not forbid the General Assembly from extending the term of an incumbent in a municipal office. This Office has concluded that, under this provision, the General Assembly may not abridge *or extend* the term of office of school board members by private act. Op. Tenn. Att’y Gen. (June 7, 1983) (no number assigned). But that opinion does not explain how extending the term would violate this provision. The term “abridge” means “[t]o reduce the length (of a written text); condense” and “[t]o curtail; cut short.” *The American Heritage Dictionary*, 68 (2d coll. ed. 1985). Article XI, § 9, of the Tennessee Constitution, therefore, does not prevent the General Assembly from altering the term of a municipal or county office by *extending* it. To the extent that it concludes that this provision prevents the General Assembly from extending the term of office of school board members by private act, therefore, the 1983 opinion is overruled.

The same result could be accomplished by amending the charter to delay elections for aldermen rather than extending the terms of the current incumbents. Under Article VII, § 5, of the Tennessee Constitution, “[e]very officer shall hold his office until his successor is elected or appointed, and qualified.” Tenn. Const. Art. VII, § 5. The Tennessee Supreme Court has held that, pursuant to this provision, “an incumbent shall, at the end of his term, continue to hold the office and exercise its powers and perform its duties until his successor has been duly appointed and qualified.” *State ex rel. Gain v. Malone*, 131 Tenn. 149, 158-59, 174 S.W. 257, 260 (1915). If the charter is amended to provide that elections to replace aldermen whose terms expire in October 2005 will not be held until November 2006, and that elections to replace aldermen whose terms expire in October 2007 will not be held until November 2008, then the current incumbents will hold over until new officers qualify under the November elections.

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